



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Public policy no doubt requires that corporations should be divested of every feature of a fictitious character, which would tend to exempt them from the ordinary liabilities necessary to the protection of the public in its dealings with them. For acts and resulting injuries committed by their subordinate agents and servants in the scope of their authority, they should be required to make adequate compensation to the injured party. When we go beyond the limit of compensation however, and inflict punishment, we enter the domain of personal responsibility, which must be founded on the act and motive of the wrongdoer; and to inflict punishment on either an individual or corporation for the malicious acts of its subordinate agents and servants, in the absence of evidence establishing participation in, or authorization or ratification of, the malicious delictual act, is practically to require that the individual or corporation be omnipotent in controlling the motives and passions of its employees, which is unreasonable. A. J. A.

---

WHEN IS A WILL SIGNED "AT THE END?"—The Pennsylvania statute, like that of most of the states, requires that "every will shall be in writing, and unless the person making the same shall be prevented by the extremity of his last sickness, shall be signed by him at the end thereof." In *In re Stinson's Estate; Appeal of Stroud et al.* (1910), — Pa. —, 77 Atl. 807, Agnes J. Stinson executed a document on a single sheet of legal cap paper, folded in the middle in the usual way along the short dimension, making four pages of equal size. The writing in question was all on the first, second and third pages, the fourth being left blank. The document was holographic, the signature of the maker, following the usual testimonium clause, was in the middle of the second page. To the left of this signature appeared those of two subscribing witnesses. The first, second and third pages contained dispositive clauses. The question was whether or not the will was signed "at the end" within the meaning of the statute; whether the end of the will is "the physical end of the writing, the point which is spatially farthest removed from the beginning, or the logical end of the testator's disposition of his property, wherever that end manifestly appears on the paper." The court concluded from an inspection of the document that the testatrix, after having written on the first page, skipped the second, proceeded to the third, and, having reached the bottom of it, returned to the second, and, when she had completed the disposition of her estate at about the middle of that page, signed her name there in the presence of two witnesses. *Held*, the will was signed "at the end" within the statute. Testator's written disposition is his *animus testandi*. When it is fully expressed, his will is finished, and the end is reached and there his signature must appear in order to fulfil the statute. What he regards as the end of his will, and what must manifestly be regarded as the end of it, from an inspection and reading of the writing, is the end of it under the statute, which contains nothing about the spatial or physical end of it.

The court expressly confirmed its dictum in *Baker's Appeal*, 107 Pa. St. 381, 52 Am. Rep. 478, where the will was written on the first and third pages of the paper and signed at the end of the third page. A devise on the third

page, indicated "4th," had been erased and the words "See next page" interlined. On the next page, that is, the fourth page, there appeared a bequest to the same person to whom the erased devise had been made, likewise indicated "4th." On identification by the scrivener of the clause on the fourth page as that referred to on the third page, and his testimony that he had written it there at testator's direction, the court allowed it to be read into the will as the fourth clause thereof, saying: "Thus the general principle has been clearly established that a will is to be read in such order of pages or paragraphs as the testator manifestly intended, and the coherence and adaptation of the parts clearly require. In writing a will upon the pages of foolscap paper, a testator may or may not conform to the order of the consecutive pages of the folio. There is no law which binds him in this respect." "In whatever order of pages it may be written, however, it is to be read according to their internal sense, their coherence or adaptation of parts. The order of connection, however, must manifestly appear upon the face of the will. It cannot be established by extrinsic proof."

It is difficult to reconcile this latter decision with the recognized rules of incorporation by reference or with the admitted object of the statute in question—to prevent fraudulent or unauthorized additions to the will. The principle has, however, been announced in several cases: *Goods of Birt*, L. R. 2 P. & D. 214, *Matter of Whitney*, 90 Hun. 138, 35 N. Y. Supp. 516. The latter case was reversed by the New York Court of Appeals, Justice BRADLEY dissenting, in *In re Whitney's Will* (1897), 153 N. Y. 259, and see *Matter of Conway*, 124 N. Y. 455 to which decision three justices dissented, *Matter of O'Neil*, 91 N. Y. 516.

*Goods of Birt*, supra, was a case in which reference was made to the other side of a page by means of an asterisk, followed by the words "See over." On the other side of the page was another asterisk, followed by a dispositive clause. Lord PENZANCE, in holding that the will was signed at the end within the English statute, and the clause on the back a part of the will, preceded his opinion with a remark that the heir, the only person interested in excluding the clause, consented to its admission. The clause was held an interlineation to be read in the place in which the testator intended that it should be read, as indicated by the asterisks, and therefore, preceding the signature. The decision is followed in *In the Will of Bull* (1905), 30 Vict. L. Rep. 38. See also *In the Will of Ellen Wyatt*, 21 Vict. L. Rep. 571.

There are two lines of decisions construing this and similar statutes—the one, of which the principal case is an example, liberally, on the ground that if possible the testator's evident intention should be carried out; the other, strictly, on the theory that only in this way can the purpose of the statutes be accomplished, and calling attention to the fact that it is a statute and not a testamentary instrument with which the court is dealing and that the intent of the legislature is controlling.

The earlier New York cases and the later Pennsylvania and English cases support the liberal construction, while the Ohio cases, the later New York cases and the earlier Pennsylvania and English cases support the strict construction. *Sisters of Charity v. Kelly et al.*, 67 N. Y. 409; *Irwin v. Jacques*,

71 Ohio St. 395, 73 N. E. 683; *Smee v. Bryer*, 6 Moore P. C. 404, 6 Notes of Cases 20; *Matter of Andrews*, 162 N. Y. 1; *Hays v. Harden*, 6 Pa. St. 409; *Goods of Wotton*, L. R. 3 P. & D. 159; *Sweetland v. Sweetland*, 4 Sw. & Tr. 6, 8; *Goods of Arthur*, L. R. 2 P. & D. 273.

Mr. WILLIAMS, in *1 WILLIAMS, EXECUTORS*, 7th Am. Ed., p. \*67 (108) et seq. explains the situation in England thus: "In the earlier cases SIR H. JENNER FUST put a very liberal construction on this part of the act. But afterwards that learned judge, in concurrence with the Judicial Committee of the Privy Council (*Smee v. Bryer*, supra) felt it necessary to take a more rigid view of this enactment, on the ground that it was intended to prevent any addition being made to the will after the deceased had executed it. And accordingly probate was refused in a great number of subsequent cases on this objection, and the intention of a great many testators unfortunately defeated. This led to the passing of the stat. 15 Vict. chap. 24."

Considering the purpose of these statutes and the clear meaning of the words used in them, it would seem to be a problem for the legislatures rather than for the courts, if any relaxation of their requirements is desirable. RUGER, C.J., in *Matter of the Will of O'Neil*, supra, in delivering the opinion of the New York Court of Appeals, at a time when that court favored the strict construction, says: "The question then arises whether the 'end of the will' referred to in the statute means the actual termination of the instrument, or that portion thereof which the testator intended to be the end of the will. While it is possible that in isolated cases the latter construction might sometimes preclude the perpetration of a wrong—it certainly would not satisfy the general object of the statute of furnishing a certain fixed and definite rule applicable to all cases. While the primary rule governing the interpretation of wills, when admitted to probate, recognizes and endeavors to carry out the intention of the testator, that rule cannot be invoked in the construction of the statute regulating their execution. In the latter case courts do not consider the intention of the testator, but that of the legislature."

"In considering the question stated upon authority, some cases are found which apparently sustain the contention of appellant's counsel (*i. e.*, for liberal construction). In all of them, however, there was a failure to observe the rules of construction, which we consider controlling. We think, however, that the weight of authority favors the theory, that the statute fixes an inflexible rule, by which to determine the proper execution of all testamentary instruments." The court here points out the change made in the English statutes by 15 and 16 Vict. c. 24, and that since that enactment the English decisions cannot be invoked to assist in the construction of American statutes not having adopted that addition; and concludes that to admit clauses of wills which follow the signature, and they must be admitted if the will be held properly executed, would open the door to all the evils which the statute was intended to prevent, and substantially abrogate its wholesome provisions.

As to whether or not the clause which follows the signature must be dispositive in order to avoid the will, the courts are not agreed. *Baker v. Baker*, 51 Ohio St. 217; *Sisters of Charity v. Kelly et al.*, supra; *Brady v. McCrosson*, 5 Redf. (N. Y.) 431, and *Ward v. Putnam*, 119 Ky. 889 hold that it must,

but see *Wineland's Appeal*, 118 Pa. St. 37; *Hays v. Harden*, supra, and I WILLIAMS, EXECUTORS, p. \*69 (111). For requirement as to place of signature before the statutes in question, see *Adams v. Field Exec'r*, 21 Vt. 256; *Lemoyne v. Stanley*, 3 Lev. 1.

See also *In re Shearman's Estate*, 146 Cal. 455; *Wikoff's Appeal*, 15 Pa. St. 281; *Matter of Collins*, 5 Redf. (N. Y.) 20; *Goods of Coombs*, L. R. 1 P. & D. 302; *Goods of Casmore*, L. R. 1 P. & D. 653; *Goods of Woodley*, 3 Sw. & Tr. 429; *Goods of Dilkes*, L. R. 3 P. & D. 164; *Margary v. Robinson*, L. R. 12 P. & D. 8; *Ayres v. Ayres*, 5 Notes of Cases 375; 3 MICH. L. REV. 650. A. McK. B.

CONSTRUCTION OF THE CODE PHRASE "SUBJECT OF ACTION."—Among the many problems of construction which have been presented to our courts by the adoption of the code system of pleading, none has caused as much confusion and conflict as has the provision that causes of action may be joined which "arise out of the same transaction or transactions connected with the same subject of action." This provision was designed in general terms by the legislatures in order to bring within its meaning numberless situations. However broadly the legislatures may have intended it to operate, the courts and learned text writers have struggled to determine upon a fixed signification for each phrase.

The subject has recently received a lengthy and learned treatment by the Wisconsin court in the case of *McArthur v. Moffett* (1910), — Wis. —, 128 N. W. 445. A complaint contained two counts, one a statutory cause of action to quiet title to certain tracts of land, the other a cause of action at law to recover damages for trespass and the cutting of timber on said land. A demurrer filed for improper joinder of causes was overruled and defendant appealed. The court held that the cases were properly joined. They say: "Evidently we are obliged to define the words 'subject of action' to reach an answer. If we say that the subject of the action is the plaintiff's alleged right alone, i. e., his title then could it be said logically that the physical trespass on the land was in anyway connected with the subject? On the other hand, if we say that the subject of the action is the land alone and not the plaintiff's title thereto, could it be said logically that the false claim of title was connected with the subject? The questions suggest that either holding would be too narrow and that with better reason it should be said in a case like the present that the subject of the action is composed both of the land and the plaintiff's alleged title taken together."

The Wisconsin court in this decision has attempted to clarify the numerous code interpretations put upon this phrase. The New York court in an early decision declined to construe the term, reaching the conclusion that as new situations arose the problem would be dealt with. *Wiles v. Suydam*, 64 N. Y. 173. In *Scarborough v. Smith*, 18 Kan. 399, the court held that the "subject of action is simply one of the elements of each of the several causes of action, uniting and combining them together." Some courts incline to the view that the legislature in using the word "subject" meant "subject matter" of the action, and the test to be applied as to the proper joinder of causes is whether